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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re K.H. et al., Persons Coming
Under the Juvenile Court Law.

B291248

(Los Angeles County
Super. Ct. No. 18LJJP00030)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

T.H.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Brett Bianco, Judge. Affirmed.

Mitchell Keiter, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, Kristine Miles, Assistant County Counsel, and David Michael Miller, Deputy County Counsel, for Plaintiff and Respondent.

T.H. (Mother) appeals from juvenile court orders finding dependency jurisdiction over her four children and, as to disposition, removing the children from her custody and directing her to participate in a mental health evaluation. We are asked to decide whether the juvenile court violated Mother’s due process rights by amending the dependency petition to conform to proof at the jurisdiction hearing (i.e., by adding language to the petition specifying the children suffered from medical and dental neglect). We also decide whether the juvenile court’s jurisdiction and disposition orders are supported by substantial evidence.

I. BACKGROUND

In November 2017, an unidentified caller telephoned the Los Angeles County Department of Children and Family Services (the Department) to report Mother was neglecting her children—three daughters, who were then four, six, and 14 years old, and one son, who was nine years old—by leaving them without adult supervision for extended periods of time. The caller also described an incident in which Mother and her children, one of whom was armed with a bat and another with what appeared to be a firearm, engaged in vandalism.

A. *The Department’s Pre-Petition Investigation*

The Department’s initial investigation of the children’s welfare substantiated much of what the caller related. Mother, her two oldest daughters, and her son confirmed that she often left the children in the care of the 14-year-old daughter because Mother had to travel regularly from Palmdale to Los Angeles where she had “a lot of business.” The younger children described sometimes having to wait outside until it was dark for

either the 14-year-old or Mother to return home and let them inside. In addition, Mother confirmed she took her children to the residence of a former romantic partner in an attempt to forcibly reclaim the family dog that she believed her former partner had taken; she further admitted (as did the children themselves) that, with her knowledge, one of the children was armed with a BB gun and another was wielding a baseball bat.

The Department's initial investigation further revealed school personnel had a "lot of concerns" regarding two of the children: the son and the middle daughter. School officials said their attendance was "not the best"; Mother forgot to pick them up after school "numerous" times; and both children were "behind on their immunizations." Mother also reported to Department personnel that her youngest daughter recently had a seizure and might have inherited a seizure disorder from her father.

Based on these and other facts, the Department sought and obtained an order authorizing the children's removal from Mother's custody in advance of formally commencing dependency proceedings. When a Department social worker and a Los Angeles County Sheriff's deputy arrived at Mother's home to detain the children, they encountered more than 16 teenagers in the residence. A scuffle between one of the teenagers and another of Mother's children—her adult son—prompted the deputy to intervene, which in turn led to a situation in which the teenagers were "yelling expletives" and "getting into the face" of the deputy, who was compelled to request backup assistance from three other units and a sergeant to help maintain order. Although Mother was at home at the time and her youngest daughter was in the middle of the confrontation, Mother did not intervene to stop the "chaos." According to the deputy who

initially accompanied the social worker to Mother's home, "The [four] year old was right in the shuffle [*sic*] and had no reaction. If there was a fight, the four year old would have been hurt."

B. The Dependency Petition and Subsequent Reporting by the Department

The Department filed a dependency petition alleging the children were at substantial risk of suffering serious physical harm from Mother's failure or inability to supervise and protect them. As filed, the petition alleged: "[Mother] placed the children in an endangering and detrimental situation in that on numerous prior occasions [Mother] left the children home alone without adult supervision for extended periods of time, as late as 7:00 p.m. On prior occasions [the youngest daughter] was found wandering outside the home without appropriate parental supervision. On prior occasions [Mother] failed to provide the children with parental supervision and the [oldest daughter] struck [the son's] face and back, inflicting bleeding to the child[s] . . . nose and red marks to the child[s] . . . back. Such an endangering and detrimental situation established for the children by [Mother] and [Mother's] failure to provide the children with appropriate parental supervision endangers the children's physical health and safety, placing the children at risk of suffering serious physical harm, damage and danger."

During the ensuing dependency proceedings, the Department submitted a series of reports to the juvenile court regarding, among other things, the physical and dental health of the children, Mother's frequent absence from the family home and the lack of adult supervision for the children, and the children's reactions after being removed from Mother's custody.

These reports were later admitted in evidence at the jurisdiction and disposition hearing that is the focus of this appeal.¹

The Department reported Mother's minor son had head lice and 12 cavities. Mother delayed treatment for her son's cavities by repeatedly refusing to provide consent if the treatment required sedation. The Department further advised the court that the oldest daughter had head lice and eight cavities; the middle daughter had eight cavities; and the youngest daughter required a root canal to address a particularly large cavity. Mother "refused to sign the consent to allow the Department to obtain any medical records to assess the medical needs of [the youngest daughter]." But the Department advised that the youngest daughter was now current on her immunizations and her seizure disorder was being evaluated. The Department was unable to assess the oldest daughter's ability to provide care for a child with a seizure disorder.

When interviewed by the Department, the oldest daughter admitted Mother "sometimes" left her in charge of her siblings, making her responsible for feeding them, bathing them, and putting them to bed. According to the oldest daughter, Mother "sometimes" would not come home by the time she (the daughter) was going to bed herself.² Mother's son, in some contrast, told the

¹ Mother objected on hearsay grounds to statements in the reports attributed to anonymous neighbors. The reports were admitted in evidence in full, but the Department conceded those statements "could not be the sole basis" for assuming jurisdiction over the children.

² In a later interview, the oldest daughter said she was home alone with her siblings until 8:00 p.m. She claimed Mother's

Department that he and his sisters were “always” left at home in the care of the oldest daughter, which he did not like because he thought she was “mean.” Mother’s son further revealed he and one of his sisters would be alone at home until the oldest daughter arrived (sometimes after dark). He also said sometimes the residence would be locked on their arrival and they would have to wait outside in the cold until Mother came home, and he “never kn[ew] how long that w[ould] be.” Mother’s son also told the Department there was no landline phone in the home, and he had no answer when asked what he would do in an emergency.

The Department’s reports also described the children’s emotional reactions to their removal from Mother’s physical custody, which were mixed. The oldest daughter appeared “upbeat about her future,” stated she “really like[d]” living with her foster family and felt “very safe” there, and “informed [Mother] that she wanted to remain in the placement during a recent visit.” Similarly, the minor son stated, “I want to stay here. I have a boy that is my age I can play with. They have Xbox 360 and I really like it here. My sister doesn’t want to leave her foster home either. She wants to stay there and I want to stay here.” The caregiver for the middle daughter reported the child displayed “confusion due to detainment” and frequently expressed “missing [Mother] since placement.” The foster mother for the youngest daughter reported that the child experienced “low mood, tearfulness, sadness, and confusion” since being detained.

adult son would come to the home and spend the night on those nights when Mother did not come home.

The Department's reports recommended the juvenile court assert jurisdiction over Mother's children because her failure to provide adequate supervision jeopardized their safety, as did Mother's questionable judgment. In the latter respect, the Department emphasized Mother's decision to enlist the children's help in attempting to forcibly retrieve the family dog and the "scuffle" that occurred when the Department (accompanied by law enforcement) served the order removing the children from Mother's custody. The Department also suggested Mother "may have unaddressed mental health concerns" and recommended Mother undergo a mental health evaluation in light of her repeated insistence that certain family members were willing to care for the children even after being present when those family members stated they were unwilling to comply with procedures that might allow the children to be placed in their home.³

C. The Jurisdiction and Disposition Hearing

Mother testified at the jurisdiction and disposition hearing held in July 2018. She denied she left the children without adult supervision for extended periods of time and, when asked by her attorney what her "day care plan [is] for the children when [she was] not there," answered as follows: "I have several plans that I have used. One was sometimes my [oldest] daughter would be

³ In addition, a Department report submitted just before the jurisdiction hearing informed the juvenile court it had "not received documentation from [Mother] reflective of [Mother's] participation in any case plan activities" and Mother had "shown no efforts toward mitigating the circumstances leading to [the Department's] supervision" of the children.

there. The[re] were also other teenagers that were there. My son who's [22] years old, he was always at home. There was a month that he did not reside with me when he left to work . . . in Chatsworth. I also had a neighbor . . . who also watched my children for me as needed. And the only day she was not available was on a Monday."

Mother's attorney also asked her to address the Department's reporting that school administrators had concerns about the children missing school and leaving school early. Mother testified there were "some occasions" when the children left school early so she could take them with her when looking for housing and she also conceded there were "a couple of occasions" when the children had to walk home partway on their own (she claimed the oldest daughter or her adult son would meet the younger children halfway when they were walking home). Mother also agreed there were "a couple of occasions" when the younger children had to wait outside after school because the home was locked and the "[oldest daughter] was late a couple of times" in getting home. When asked what her plan would be for the children's care if they were returned to her custody, Mother answered: "I plan to continue to love and care for my children like I have been and give them the best education that they are entitled to" ⁴

⁴ Mother was specifically asked whether she would continue using her oldest daughter as the "primary caregiver" for the other children. Mother disputed the oldest daughter was the primary caregiver and said her neighbor was also a caregiver and "on call whenever I needed her."

Arguing the case, counsel for the Department contended the evidence established Mother's failure or inability to supervise the children, resulting in neglect and a risk to their safety—as evidenced, among other things, by their having to wait outside the locked home, the absence of a working telephone in the home in case of emergency (especially in light of the youngest daughter's seizure condition), and the medical and dental condition of the children (numerous cavities and head lice). The Department also cited Mother's poor judgment, as evidenced by the decision to take them with a baseball bat and BB gun on a mission to retrieve the family dog. Counsel for the children joined with the Department in urging the court to sustain the petition, with one of the attorneys for the children specifically asking the court to order a psychological evaluation of Mother. The attorney for the oldest daughter, however, asked the court to strike the language in the dependency petition about her client striking the son and causing him to bleed because “naming my client as an aggressor in the petition when she's only being required to provide essentially parental care for the other children is not fair to her.” Mother's attorney argued the court should dismiss the petition because “a single mother who's trying to make ends meet and leaving a [14-year-old] as a babysitter is not a jurisdictional problem.”

The juvenile court ruled it would assume dependency jurisdiction over the children. It explained the rationale for its ruling in extensive remarks on the record: “There's nothing inherently wrong with relying on a [14]-year-old to care on occasion for siblings. [¶] However, the record is replete with evidence of neglect and frankly, Mother's abdication of parental responsibility. The kids are missing school. There's been

significant dental neglect, issue with lice, not up to date on their immunization, to their school enrollment being in jeopardy. Mother has unexplained extended absences. Even a neighbor with no reason to make up a story or know [a] parent's motive had concerns with Mother's extended absences [from] the unattended children. [¶] She was uncooperative with the Department. She made no provisions for the children when they arrived from school—sometime[s] the home being locked and the children were locked out, cold, hungry. There were occasions when she was not picking up the children from school. Teachers would call and she would tell them have the kids just walk home but no one would be waiting for the kids when they got there. [¶] . . . [¶] And importantly, when asked what would you [i.e., Mother] have done differently[,] which was Mother's opportunity to really offer some insight into what led us here, all she could offer w[as]—she would not have moved to the Antelope Valley. [¶] There is clearly a disconnect between the court's perspective on the reality of the situation and Mother's perspective. The court does believe that there are more issues than a single count in the petition suggests, and the court does believe that probably the Department has just stumble[d] upon the tip of an iceberg of neglect”

The juvenile court agreed to counsel's request to strike the language in the petition alleging the oldest daughter hit the son and drew blood. The court further advised the parties it was inserting a sentence in the petition that read: “Mother has neglected the children's medical and dental needs.”⁵ When the

⁵ As amended and sustained, the petition reads: “The children[s] mother . . . placed the children in an endangering and

case proceeded to discussion of disposition, Mother lodged a late objection to the court's amendment of the petition, contending she had no notice she would need to defend against an allegation of medical or dental neglect.

The juvenile court declared the children dependents of the court, ordered them removed from Mother's custody, directed the Department to provide Mother with monitored visitation, and ordered Mother to undergo individual counseling. The court additionally ordered Mother to submit to a mental health evaluation. Three months later, the juvenile court received that completed psychological evaluation and ordered Mother to be seen by a licensed therapist.

II. DISCUSSION

The trial court's amendment of the petition to specify the medical and dental consequences of Mother's lack of adequate parental supervision did not infringe Mother's due process rights because the amendment did not change the petition's theory of

detrimental situation in that on numerous prior occasions the mother left the children home alone without adult supervision for extended periods of time, as late as 7:00 p.m. On prior occasions the [youngest daughter] was found wandering outside the home without appropriate parental supervision. On prior occasions the mother failed to provide the children with parental supervision. Mother has neglected the children's medical and dental needs. Such an endangering and detrimental situation established for the children by the mother and the mother's failure to provide the children with appropriate parental supervision endangers the children's physical health and safety, placing the children at risk of suffering serious physical harm, damage and danger."

dependency or raise a new factual issue. Rather, the added facts, which were drawn from reports prepared by the Department for the court and other parties to the case, served only to conform the allegations to proof adduced at the hearing and highlight a further deleterious consequence of Mother's unwillingness or inability to give her children adequate supervision and attention.

For reasons we shall explain (and as our recitation of the case background already makes clear), the jurisdiction findings and the disposition order removing the children from her care are both supported by the requisite substantial evidence. Mother's final challenge on appeal—to the necessity of the juvenile court's order to undergo a mental health evaluation order—is moot because she submitted to the evaluation.

A. The Juvenile Court Did Not Abuse Its Discretion by Amending the Petition to Conform to Proof

1. Governing law and the standard of review

The Department is not required to provide lengthy or detailed factual allegations in a dependency petition; rather it is obligated to provide only “[a] concise statement of facts, . . . to support the conclusion that the child upon whose behalf the petition is being brought is a person within the definition of each of the sections and subdivisions under which the proceedings are being instituted.” (Welf. & Inst. Code,⁶ § 332.)

A juvenile court may amend a dependency petition to conform to the evidence received at the jurisdiction hearing to remedy immaterial variances between the petition and proof.

⁶ Undesignated statutory references that follow are to the Welfare and Institutions Code.

(§ 348; Code Civ. Proc., § 470.) However, material amendments that mislead a party to his or her prejudice are not allowed. (Code Civ. Proc., §§ 469-470; *In re Andrew L.* (2011) 192 Cal.App.4th 683, 689.)

“Given the haste with which petitions are sometimes drafted, . . . the ability to amend according to proof plays an important role in the overall dependency scheme. If a variance between pleading and proof—to use the traditional term of art from the civil law [citation]—is so wide that it would, in effect violate due process to allow the amendment, the court should, of course, refuse any such amendment. . . . [¶] The basic rule from civil law,⁷ however, is that amendments to conform to proof are favored, and should not be denied unless the pleading as drafted prior to the proposed amendment would have misled the

⁷ In deciding whether to allow an amendment during trial, civil courts are guided by two principles: ““(1) whether facts or legal theories are being changed and (2) whether the opposing party will be prejudiced by the proposed amendment. Frequently, each principle represents a different side of the same coin: If new facts are being alleged, prejudice may easily result because of the inability of the other party to investigate the validity of the factual allegations while engaged in trial or to call rebuttal witnesses. If the same set of facts supports merely a different theory . . . no prejudice can result.”” (*Duchrow v. Forrest* (2013) 215 Cal.App.4th 1359, 1378; accord, *Garcia v. Roberts* (2009) 173 Cal.App.4th 900, 910.) ““The basic rule applicable to amendments to conform to proof is that the amended pleading must be based upon the same general set of facts as those upon which the cause of action or defense as originally pleaded was grounded.”” (*Duchrow v. Forrest, supra*, at p. 1378.)

adversarial party to its prejudice.” (*In re Jessica C.* (2001) 93 Cal.App.4th 1027, 1041-1042 (*Jessica C.*); accord, *In re David H.* (2008) 165 Cal.App.4th 1626, 1640 [“[o]nly if the variance between the petition and the proof offered at the jurisdictional hearing is so great that the parent is denied constitutionally adequate notice of the allegations against him or her should a juvenile court properly refuse to allow an amendment to conform to proof”].)

A juvenile court’s decision to amend a petition to conform to proof is reviewed for abuse of discretion. (*Jessica C.*, *supra*, 93 Cal.App.4th at p. 1043 [applying abuse of discretion review]; see also *Trafton v. Youngblood* (1968) 69 Cal.2d 17, 31; *Duchrow v. Forrest*, *supra*, 215 Cal.App.4th at pp. 1377-1378.)

2. *Analysis*

In *Jessica C.*, a case Mother cites, the Court of Appeal provided the following illustration of an amendment to conform to proof that would violate a parent’s right to due process: “[S]uppose a petition only alleges, under subdivision (d) of section 300, a variety of specific sexual acts perpetrated by a parent, but the trial judge does not find these are true. The county then attempts to amend the petition to allege serious *emotional* damage under subdivision (c) of section 300, based on the idea that any child who would make such allegations, even if false, has obviously been subject to emotional abuse. Such a tactic would be nothing more than a cheap way to establish dependency without giving the parent adequate notice of dependency jurisdiction under an emotional abuse theory.” (*Jessica C.*, *supra*, 93 Cal.App.4th at p. 1042, fn. 14.)

That is not what we have here, nor do we have anything like it. The juvenile court did not delete the only existing allegation under section 300 and replace it with a new allegation under a completely different subdivision of section 300. Instead, the court augmented the existing allegation of a substantial risk of serious physical harm caused by parental failure or inability to provide adequate supervision by citing further evidence of that failure or inability that was referenced in the Department's reports and argued by the Department at the jurisdiction hearing, namely, Mother's neglect in ensuring the children had adequate dental and medical care. Also unlike the example discussed in *Jessica C.*, the juvenile court found true the overarching theory of dependency jurisdiction, i.e., that Mother exposed her children to a substantial risk of serious physical harm through her inability or unwillingness to ensure they were adequately supervised. The evidence of dental and medical neglect was just part of the evidence justifying that finding.

Furthermore, Mother's implicit assertion that she was blindsided by the amendment to the petition and therefore unable to take steps she otherwise would have taken to defend against it rings hollow on this record for two reasons. First, the evidence of the children's serious dental problems, head lice, and immunization lapses were referenced prominently in multiple post-petition Department reports. (Compare *In re Crystal J.* (1993) 12 Cal.App.4th 407, 413 ["failure to provide parents with a copy of the social worker's report, upon which the court will rely in coming to a decision, is a denial of due process"].) Second, the Department's attorney was the first to argue at the jurisdiction hearing and repeatedly made reference to the children's medical and dental issues as evidence of how Mother's lack of supervision

resulted in neglect to the children. Counsel for Mother's son argued next, joining the Department's argument and stating "[i]t seems like all of [Mother's] extra curricular activities are pretty much taking priority over her children's medical, educational, and just well-being in general." Counsel for Mother argued last and made no lack of notice objection at that time to the parties' arguments concerning the dental and medical neglect evidence, made no rebuttal to that evidence on the merits, and made not even a request for a continuance to undertake further investigation to somehow defend against the claim that her son's 12 cavities, for instance, were not evidence of neglect and lack of parental supervision. That the objection came only after the juvenile court amended the petition to conform to proof and proceeded to disposition reveals there was no true concern about perceived unfairness in being unable to mount a defense.

The chief authority on which Mother relies to argue for reversal on due process notice grounds, *In re Neal D.* (1972) 23 Cal.App.3d 1045 (*Neal D.*), disapproved on other grounds in *In re B.G.* (1974) 11 Cal.3d 679, is inapposite. In that case, the juvenile court assumed jurisdiction over two children after it found that the mother's home (a condemned building) was not suitable for minors. (*Id.* at p. 1047.) Once the mother found a new home, she filed a petition to terminate the court's jurisdiction along with an affidavit from a social worker who attested that the new home was suitable for minors. The social services agency then filed a supplemental report that "did not dwell upon the suitability of the home," but instead raised "completely new circumstances," such as the mother's "[p]hysical, mental, emotional and social problems." (*Id.* at p. 1048.) The juvenile court denied the mother's petition to terminate

jurisdiction, relying on the new circumstances raised by the supplemental report. The Court of Appeal reversed, holding that the mother and all other interested parties had a due process right to be “apprised of the [new] allegations” so they could “be prepared to meet” them. (*Id.* at p. 1050.) Here, in contrast to *Neal D.*, the juvenile court did not amend the petition so as to allege a completely new theory of dependency.

In sum, and contrary to Mother’s assertion, the juvenile court did not engage in an improper “bait-and-switch” tactic. Because the court did not add a new theory of dependency to the petition, but only bolstered the existing theory by replacing the sentence in the petition it agreed to delete with another sentence drawn from facts discussed in pre-hearing reports and the argument of counsel, we hold that the amendment of the petition to conform to proof at the hearing was not an abuse of discretion.

B. The Juvenile Court’s Jurisdiction Findings and Disposition Orders Are Supported by Substantial Evidence

1. Standard of review

“We review the juvenile court’s jurisdictional findings for sufficiency of the evidence. [Citations.] We review the record to determine whether there is any substantial evidence to support the juvenile court’s conclusions, and we resolve all conflicts and make all reasonable inferences from the evidence to uphold the court’s orders, if possible. [Citation.] [Citation.] “‘The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.’ [Citations.]”” (*In re V.M.* (2010) 191 Cal.App.4th 245, 252.) The same standard applies to review of the court’s disposition order removing the

children from Mother's custody. (*In re F.S.* (2016) 243 Cal.App.4th 799, 811-812; *In re Francisco D.* (2014) 230 Cal.App.4th 73, 80; *In re N.M.* (2011) 197 Cal.App.4th 159, 170.)

2. *Substantial evidence supports the jurisdiction findings*

A juvenile court may assert jurisdiction over a child where “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left” (§ 300, subd. (b)(1); see also *In re R.T.* (2017) 3 Cal.5th 622, 629 [first clause of section 300, subdivision (b)(1) “requires no more than the parent’s ‘failure or inability . . . to adequately supervise or protect the child’”].)

Here, there was substantial evidence that the children were at substantial risk of serious harm or illness as a result of Mother’s failure or inability to supervise the children herself or arrange for other proper adult supervision. At times, the children were locked out of their home after school for hours because no one was home to let them into the house. The children, including the youngest daughter who suffered from a seizure disorder, were repeatedly left at home without adult

supervision.⁸ In addition, there was ample evidence that the children's health had suffered or was at risk of suffering due to Mother's neglect: two of the children suffered from head lice, three of the children required extensive remedial dental care, and two of the children were behind on their immunizations. Finally, Mother affirmatively put the children's safety at risk on one occasion—arming the children with weapons for the attempted forcible retrieval of the family dog—and seemed unconcerned with her youngest daughter's safety on a second occasion—the execution of the initial removal order at her home. All told, this is substantial evidence supporting jurisdiction.⁹

3. *Substantial evidence supports the removal orders*

A dependent child may be removed from a parent's custody when there is clear and convincing evidence of a substantial danger to the child's health, safety, and emotional well-being that cannot be eliminated by reasonable means short of removal.

⁸ It was at best unclear whether the oldest daughter had received any training to care for her sister in the event she suffered a seizure while in the teenager's care.

⁹ Mother's argument that the juvenile court lacked substantial evidence to support its jurisdiction findings because she filed a written objection to certain hearsay statements made by an anonymous neighbor, which were included in the Department's detention report, is unavailing. Although those hearsay statements were not sufficient by themselves to support jurisdiction (§ 355, subd. (c)(1)), there was, as discussed above, other evidence, substantial in nature, to support the court's findings.

(§ 361, subd. (c)(1).) A removal order is proper when there is “proof of parental inability to provide proper care for the child and proof of a potential detriment to the child if he or she remains with the parent. [Citation.] “The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.” [Citation.] The court may consider a parent’s past conduct as well as present circumstances.’ [Citation.]” (*In re A.S.* (2011) 202 Cal.App.4th 237, 247.) “The jurisdictional findings are prima facie evidence the minor cannot safely remain in the home. [Citation.]” (*In re. T.V.* (2013) 217 Cal.App.4th 126, 135-136.)

Mother argues that there were alternatives to removal, such as close supervision by the Department, and that those alternatives were preferable to removal because the children were “devastated” by the involuntary separation.¹⁰ The argument is unpersuasive.

In addition to evidence of Mother’s failure to supervise and protect the children—leaving them alone and without proper supervision for extended periods, not tending diligently to their medical and dental health, and placing them at risk of physical harm either through active or passive disregard for their safety—

¹⁰ Mother also states “[i]t is not certain that the court found removal under the applicable burden of proof” because “[t]he court’s statement on the record made no mention of the enhanced burden of proof.” The claim is not borne out by the record, given the trial court’s on-the-record reference to Dependency Order 415, which references the clear and convincing standard of proof. The claim is also inconsistent with established law. (Evid. Code, § 664.)

Mother resisted the Department's efforts to investigate and ensure the family's welfare. Among other things, Mother initially refused to allow the minor son to get dental treatment, she denied the Department access to medical records about her youngest daughter's seizure disorder, and she prevented the Department from determining prior to the jurisdiction hearing whether her oldest daughter was able to care for the youngest daughter in the event of a seizure. Even more significant, when testifying at the hearing with the dependency case having been pending for months, Mother still displayed a marked lack of awareness of how her conduct endangered her children—stating, when asked, that she would continue to care for her children as she had been previously. This is strong evidence supporting removal. (See, e.g., *In re Maria R.* (2010) 185 Cal.App.4th 48, 71 [parent's refusal to cooperate with social services agency and denial that children were at risk of harm is evidence that removal is necessary], disapproved on another ground by *In re I.J.* (2013) 56 Cal.4th 766; see also *In re John M.* (2013) 217 Cal.App.4th 410, 418-419; *In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197.)

Furthermore, while Mother is right insofar as she states there was evidence that all of the children (naturally) experienced some sadness when initially removed from her custody, it is not true that all of the children remained that way throughout the separation. As the separation continued, the two oldest children—the oldest daughter and Mother's son—in fact expressed positive feelings about, and a preference for staying with, their foster parents.

*C. Mother's Challenge to the Order to Undergo a
Psychological Evaluation Is Moot*

In a dependency case, the question of mootness is decided on a case-by-case basis. (*In re Dani R.* (2001) 89 Cal.App.4th 402, 404.) An action that was originally based on a justiciable controversy cannot be maintained on appeal if all the questions have become moot because of subsequent acts such that a reversal would be without practical effect. (*Ibid.*) Mother did not obtain a stay of the court's order to undergo a psychological evaluation and that evaluation has since been completed. Her challenge to the requirement that she sit for such an evaluation is accordingly moot—our resolution of the claim would have no practical effect nor provide Mother with any meaningful relief.¹¹

¹¹ A reviewing court may exercise its discretion to resolve an issue rendered moot by subsequent events if the question to be decided is of continuing public importance and is a question capable of repetition, yet evading review. (*Laurie S. v. Superior Court* (1994) 26 Cal.App.4th 195, 199; accord, *J.N. v. Superior Court* (2007) 156 Cal.App.4th 523, 530, fn. 4.) This case is not one where the exercise of such discretion would be appropriate.

DISPOSITION

The jurisdiction findings and disposition orders are affirmed.

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BAKER, J.

We concur:

RUBIN, P. J.

KIM, J.